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**Division of Insurance, Petitioner**

**v.**

**Eric James Beier, Respondent**

**Docket No. E2004-12**

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**Order on Petitioner's Motion for Summary Decision**

***Introduction and Procedural History***

On April 23, 2004, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Eric James Beier (“Beier”), who is currently licensed by Massachusetts as an insurance producer. The Division alleges that Beier provided incorrect, misleading, incomplete or materially untrue information in an application for an insurance producer’s license, thereby violating G.L. c. 175, §162R (a)(1), and that his failure to disclose his criminal record information is an unfair or deceptive act or practice in the business of insurance. It alleges, as well, that such conduct demonstrates untrustworthiness and incompetence in the conduct of business. The Division seeks orders that Beier has engaged in conduct that violates several section of the Massachusetts insurance laws, and asks for revocation of his license, imposition of fines, and orders barring Beier from engaging in the business of insurance.

A Notice of Procedure (“Notice”) issued on April 29, 2004, which advised Beier that a hearing on the OTSC would be held on June 15, 2004, at the offices of the Division, that a prehearing conference would take place on May 28, also at the Division, and that the hearing would be conducted pursuant to G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, *et seq.* The Notice advised Beier to file an answer pursuant to 801 CMR 1.01(6)(d) and that, if he failed to file an answer, the Division might move for an order of default, summary decision or decision on the

pleadings granting it the relief requested in the OTSC. It also notified Beier that, if he failed to appear at the prehearing conference or hearing, an order of default, summary decision or decision on the pleadings might be entered against him. The Commissioner designated me as presiding officer for this proceeding.

The Division's certificate of service indicates that, on April 30, the Notice and OTSC were sent by certified mail to respondent at his residence in Haverhill, Massachusetts. On that same date, the Division also sent copies of those documents to respondent at that address by regular first class mail. The certified mail was returned to the Division on or about May 17, with the notation that it was unclaimed. The documents sent by regular first class mail were not returned. A prehearing conference, pursuant to 801 CMR 1.01(10)(a), took place on May 28. Joseph P. Sullivan, Esq., appeared for the Division. Beier filed no answer or other responsive pleading and did not appear at the conference. Mr. Sullivan reported that on May 18, Beier, in the course of a telephone conversation with Mr. Sullivan, confirmed that he had received the OTSC and was aware of the dates for the hearing and prehearing conference. Beier failed to appear at the hearing on June 15. Mr. Sullivan stated that he had sent the respondent a proposed settlement, but had received no response from him. On June 18, the Division filed a motion for summary decision stating, as grounds for the motion, that Beier had failed to appear at both the prehearing conference and the hearing. An order issued on June 21 advising respondent to file any response to the Division's motion by June 30. Beier failed to file a response to the motion.

### ***Finding of Default***

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made. In conformity with G.L. c. 175, §174A, the OTSC and Notice were sent to respondent at the address shown on the Division's licensing records via certified mail.<sup>1</sup> Even though the certified copies were returned to the Division, service was complete under the statute. Furthermore, the copies of the OTSC and Notice sent to Respondent by regular first-class mail were not returned. Additionally, counsel for the Division stated that the respondent, in a telephone conversation, acknowledged that he had received the OTSC and Notice. I conclude, further, that Beier's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the scheduled prehearing conference or at the hearing warrant findings that he is in default. By his default, Beier has waived his right to proceed further

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<sup>1</sup> I note that G.L. c. 175, §174A provides that notices of hearings in matters involving revocation of licenses "shall be deemed sufficient when sent postpaid by registered mail to the last business or residence address of the licensee appearing on the records of the commissioner. . . ." Pursuant to G. L. c. 4, §7, ¶44, registered mail, when used with reference to the sending of notice, includes certified mail.

with an evidentiary hearing in this case and I may consider the Division's motion for summary decision based solely upon the OTSC and the motion itself.

***Findings of Fact***

On the basis of the record before me, consisting of the OTSC and the motion for summary decision, I find the following facts:

1. Respondent Beier was first licensed as a resident insurance agent in Massachusetts on or about November 4, 2002. Effective May 16, 2003, his agent license was converted to an insurance producer's license.
2. Beier currently has no appointments to represent any insurance company.
3. On or about April 15, 1993, Beier was arraigned in the Haverhill District Court, charged with five violations of the motor vehicle laws. Beier pled to sufficient facts to warrant a guilty finding on each of these charges. On two of the charges, he was sentenced to ten days in the house of correction; on a third he was fined. The sentences were suspended, and he was placed on probation.
4. On or about April 3, 1995, Beier was arraigned in the Haverhill District Court, charged with the malicious destruction of property. He was found guilty and sentenced to one year of probation.
5. On or about March 11, 1996, Beier was arraigned in the Haverhill District Court, charged with being a disorderly person and with resisting arrest. Subsequently, he was found guilty of both charges and sentenced to 30 days in the house of correction. His sentence was stayed for a year and Beier was placed on probation.
6. On or about July 22, 1996, Beier was found to have violated the terms of his probation and was required to serve his 30-day sentence.
7. On or about March 1, 1999, Beier was arraigned in the Haverhill District Court on a charge of violating the motor vehicle laws. He pleaded guilty to the charge, and paid a fine.
8. On or about February 29, 2000, Beier was arraigned in the Haverhill District Court, on a charge of threatening to commit a crime. He pleaded guilty and was sentenced to 30 days in the house of correction. His sentence was suspended for one year and he was placed on probation.
9. On or about August 1, 2000, Beier was found to have violated the terms of his probation and was required to serve his 30-day sentence.
10. On or about May 5, 2003, Beier, in the course of engaging in the business of insurance, filed with the Division an application for a Transitional Individual Producer License ("TIPL").

11. Question No. 1 on the TIPL asks whether the applicant has ever been convicted of, or is currently charged with, committing a crime.
12. Beier answered yes to that question, but reported only the charges for which he was arraigned on March 1, 1999 and February 29, 2000.
13. Beier failed to disclose his convictions in 1993, 1995 and 1996.

### ***Conclusions of Law***

Beier is currently licensed in Massachusetts as an insurance producer pursuant to G.L. c. 175, §§162G-162X. G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may revoke a producer's license. The Division identifies three subsections of G. L. §162R (a) as grounds for revocation of Beier's license: 1) §162R (a)(1), "providing incorrect, misleading, incomplete or materially untrue information in the license application; 2) §162R (a)(2), in pertinent part, "violating any insurance laws or regulations"; and 3) §162R (a)(8), "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere." I find that the record fully supports each of these grounds for revocation.<sup>2</sup>

Based on the above findings of fact, I conclude that Beier failed to report his complete criminal history on his application for a TIPL, and therefore provided incorrect, misleading, incomplete or materially untrue information to the Division. That failure supports the first ground for revoking his license. I find, further, pursuant to G.L. c. 176D, §§2 and 6, that Beier's failure to include complete information on the application is an unfair or deceptive practice, and supports revocation of his license for violating Massachusetts insurance laws or regulations. In addition, I find that failure to provide complete and accurate information to the Commissioner is a dishonest practice, demonstrates untrustworthiness in the conduct of business, and establishes a third ground for revoking Beier's license .

I conclude, therefore, that Beier's license should be revoked, that he should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and that he should be required to dispose of any interest he may have in any insurance business. G. L. c. G. L. c. 176D, §7 permits the Commissioner to impose a

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<sup>2</sup> G. L. c. 175, §162R (a)(3), also provides for revocation for "obtaining or attempting to obtain a license through misrepresentation or fraud."

fine of up to \$1,000 for each commission of an unfair or deceptive act or practice. In addition, G. L. c175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with G. L. c. 176D, §7 for a series of causes including, in subsection (a)(2), violations of the insurance laws and regulations. I find that Beier, by omitting information relating to three separate prosecutions, in 1993, 1995 and 1996, from his TIPL application, committed three unfair or deceptive acts and three statutory violations, and will therefore impose a fine of Three thousand Dollars (\$3,000).

## **ORDERS**

Accordingly, after due notice, hearing and consideration it is

**ORDERED:** That any and all insurance licenses issued to Eric James Beier by the Division of Insurance are hereby revoked; and it is

**FURTHER ORDERED:** that Eric James Beier shall return to the Division any licenses in his possession, custody or control; and it is

**FURTHER ORDERED:** that Eric James Beier is from the date of this order prohibited from transacting any insurance business, acquiring any business, or accepting employment in any insurance business in the Commonwealth of Massachusetts, whether such interest or employment is as manager, owner, partner, stockholder, officer, director, employee or in any other capacity; and it is

**FURTHER ORDERED:** that pursuant to G. L. c. 175, §166B, Eric James Beier shall forthwith dispose of any interest as proprietor, partner, stockholder, officer or employee of any licensed agent or broker; and it is

**FURTHER ORDERED:** that Eric James Beier shall pay fines totaling Three Thousand Dollars (\$3,000) to the Division of Insurance.

This decision has been filed this sixth day of July 2004, in the office of the Commissioner of Insurance. A copy shall be sent to Beier by certified mail, return receipt requested, as well as by regular first class mail, postage prepaid.

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Jean F. Farrington  
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.